

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail in Illinois. See 35 ILCS 120/2. (This is a GIL).

March 23, 1999

Dear Xxxxx:

This letter is in response to your letter received February 17, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

When we purchased our Boat in June of 1998 - our dealer explained to us the difference between documentation with the Coast Guard verses registering the boat with the State & paying sales tax. Naturally, we chose to document. We spoke with five different Boat owners on our same dock that chose this method also!

In Oct '98 I received a bill for sales tax. I was advised to pay the tax & write a letter of explanation to the Legal Counsel. As of today, January 25th, I have not received a reply. I am now required to pay a penalty & interest which I do not feel I owe. I simply cannot understand why it took from June 1st until Oct 15th to decide that I needed to pay the sales tax. That is an awfully long period of time & I am wondering if this is not normal practice - so you will get extra revenue for late assessment fees. I would appreciate it if someone would take the time to respond.

We apologize for the delay in our response to your inquiry. We did not receive your original letter to us.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail in Illinois. See 35 ILCS 120/2. Section 3 of the Illinois Use Tax Act (35 ILCS 105/3) imposes a tax upon the use in Illinois of tangible personal property purchased at retail from a retailer. Watercrafts are considered to be tangible personal property when sold in Illinois, unless the sale is in interstate commerce. A sale in interstate commerce is where the seller of an item of tangible personal property purchased in Illinois sends it out of Illinois and the item is never going to return to Illinois. If the purchaser takes delivery in Illinois of an item the sale is subject to Illinois sales tax, even if the purchaser plans to take the item out of Illinois and intends that the item will never return to the State. See 35 ILCS 120/2-60.

Regardless of how the watercrafts are registered, their sale is subject to tax if the sale is made in Illinois. Illinois retailers are required to collect the tax. Your letter does not indicate whether you purchased the boat from an Illinois dealer or an out-of-State dealer. Out-of State dealers with no nexus with Illinois have no obligation to collect Illinois tax. Out-of State dealers with nexus with Illinois must collect Illinois Use Tax. If a watercraft is purchased from an out-of-State dealer who does not collect the tax, and the purchaser intends to use the watercraft in Illinois, the purchaser must self-assess Use Tax and remit it to the Department. See 86 Ill. Adm. Code 150.101. If the purchaser fails to do so, he may become liable for penalties and interest.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.